

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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YEHUDA NELKENBAUM,
Plaintiff,

v.

POLICE OFFICER JORDY; POLICE
OFFICER CHAVALIER; SERGEANT
SCHEVERING; ASSISTANT SULLIVAN
COUNTY DISTRICT ATTORNEY LEIGH
WELLINGTON; AND JOHN DOE # 1-10;
AND JANE DOE # 1- 10,
Defendants.

ORDER

19 CV 7953 (VB)

The Court is in receipt of two letters from plaintiff, each dated July 20, 2020.

In the first, plaintiff states he seeks to withdraw his in forma pauperis application so that he may pay the filing fee and serve process on defendants himself. (Doc. #19).

In the second, plaintiff seeks the following relief: (i) that “the defendant’s [Wellington’s] motion to dismiss be held in abeyance” so that by October 15, 2020, plaintiff may file a motion for leave to amend his complaint pursuant to Fed. R. Civ. P. 15, or (ii) to extend plaintiff’s time to file an opposition to defendant Wellington’s motion to dismiss to 60 days after plaintiff receives from Wellington’s counsel the copies of the unpublished cases cited within Wellington’s motion to dismiss. In addition, plaintiff seeks an order from the Court directing defendant Wellington’s counsel to provide plaintiff with copies of these unpublished cases. (Doc. #20).

On July 23, 2020, defendant Wellington’s counsel filed a letter (i) opposing plaintiff’s request to amend the complaint as to defendant Wellington; (ii) stating Wellington does not oppose plaintiff’s request for an extension to file an opposition to Wellington’s motion to dismiss, but noting plaintiff’s request for almost three more months is “too much” especially

because plaintiff has already been granted a two-month extension; and (iii) noting defense counsel has already served plaintiff with the unpublished cases, but that he would re-serve the cases if the Court so requires. (Doc. #21).

Accordingly, it is HEREBY ORDERED:

1) Plaintiff has not complied with Judge Briccetti's Individual Practices, paragraph 1.G.v, which requires that letter-motions requesting an extension of time indicate if the adversary consents, and if not, identify the reasons given by the adversary for refusing to consent. Given plaintiff's pro se nature, the Court will not require plaintiff to refile his letters to include this information, but in the future, the Court will not entertain requests that are not made in compliance with Judge Briccetti's Individual Practices.

2) In addition, plaintiff's letters do not mention whether he contacted defense counsel to request copies of the unpublished cases. Yet defense counsel states such cases were already sent to plaintiff. In the future, the parties shall communicate in good faith with each other before requesting Court intervention.

3) By July 31, 2020, Wellington's counsel shall mail to plaintiff at the address on the docket the unpublished cases cited in Wellington's motion to dismiss in accordance with Local Civil Rule 7.2 and file proof of service of the same on the ECF docket.

4) By August 7, 2020, plaintiff shall pay the filing fee to the Clerk of Court.

5) Plaintiff's request to file a motion to amend his complaint is DENIED WITHOUT PREJUDICE.

6) Plaintiff's request to hold defendant Wellington's motion to dismiss in abeyance is DENIED. Plaintiff's time to file an opposition to defendant's motion to dismiss is extended to

September 30, 2020. **The Court is unlikely to grant a further extension for plaintiff to file the opposition.** Defendant Wellington's reply, if any, is due on October 7, 2020.

In addition, in light of the current global health crisis, parties proceeding pro se are encouraged to submit all filings by email to Temporary_Pro_Se_Filing@nysd.uscourts.gov. Pro se parties also are encouraged to consent to receive all court documents electronically. A consent to electronic service form is attached to this Order. It is also available on the Court's website at: <https://www.nysd.uscourts.gov/sites/default/files/pdf/covid-19/Notice%20-%20Pro%20Se%20Email.pdf>, a website which also includes other helpful information for pro se parties. Pro se parties who are unable to use email may submit documents by regular mail or in person at the drop box located at the U.S. Courthouses in Manhattan (500 Pearl Street) and White Plains (300 Quarropas Street). For more information, including instructions on this new email service for pro se parties, please visit the Court's website at nysd.uscourts.gov.

The Clerk of Court is directed to issue summonses as to defendants Police Officer Jordy, Police Officer Chavalier, and Sergeant Schevering. Plaintiff is directed to serve the summonses and complaint on each defendant within 90 days of the issuance of the summonses. If within those 90 days, Plaintiff has not either served defendants or requested an extension of time to do so, the Court may dismiss the claims against defendants under Rules 4 and 41 of the Federal Rules of Civil Procedure for failure to prosecute.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purposes of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444–45 (1962).

Chambers will mail a copy of this Order to plaintiff at the address on the docket.

Dated: July 24, 2020
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent Briccetti', written over a horizontal line.

Vincent L. Briccetti
United States District Judge



**United States District Court
Southern District of New York**

Pro Se (Nonprisoner) Consent to Receive Documents Electronically

Parties who are not represented by an attorney and are not currently incarcerated may choose to receive documents in their cases electronically (by e-mail) instead of by regular mail. Receiving documents by regular mail is still an option, but if you would rather receive them only electronically, you must do the following:

1. Sign up for a PACER login and password by contacting PACER¹ at www.pacer.uscourts.gov or 1-800-676-6856;
2. Complete and sign this form.

If you consent to receive documents electronically, you will receive a Notice of Electronic Filing by e-mail each time a document is filed in your case. After receiving the notice, you are permitted one “free look” at the document by clicking on the hyperlinked document number in the e-mail.² Once you click the hyperlink and access the document, you may not be able to access the document for free again. After 15 days, the hyperlink will no longer provide free access. Any time that the hyperlink is accessed after the first “free look” or the 15 days, you will be asked for a PACER login and may be charged to view the document. For this reason, *you should print or save the document during the “free look” to avoid future charges.*

IMPORTANT NOTICE

Under Rule 5 of the Federal Rules of Civil Procedure, Local Civil Rule 5.2, and the Court’s Electronic Case Filing Rules & Instructions, documents may be served by electronic means. If you register for electronic service:

1. You will no longer receive documents in the mail;
2. If you do not view and download your documents during your “free look” and within 15 days of when the court sends the e-mail notice, you will be charged for looking at the documents;
3. This service does *not* allow you to electronically file your documents;
4. It will be your duty to regularly review the docket sheet of the case.³

¹ Public Access to Court Electronic Records (PACER) (www.pacer.uscourts.gov) is an electronic public access service that allows users to obtain case and docket information from federal appellate, district, and bankruptcy courts, and the PACER Case Locator over the internet.

² You must review the Court’s actual order, decree, or judgment and not rely on the description in the email notice alone. See ECF Rule 4.3

³ The docket sheet is the official record of all filings in a case. You can view the docket sheet, including images of electronically filed documents, using PACER or you can use one of the public access computers available in the Clerk’s Office at the Court.

CONSENT TO ELECTRONIC SERVICE

I hereby consent to receive electronic service of notices and documents in my case(s) listed below. I affirm that:

1. I have regular access to my e-mail account and to the internet and will check regularly for Notices of Electronic Filing;
2. I have established a PACER account;
3. I understand that electronic service is service under Rule 5 of the Federal Rules of Civil Procedure and Rule 5.2 of the Local Civil Rules, and that I will no longer receive paper copies of case filings, including motions, decisions, orders, and other documents;
4. I will promptly notify the Court if there is any change in my personal data, such as name, address, or e-mail address, or if I wish to cancel this consent to electronic service;
5. I understand that I must regularly review the docket sheet of my case so that I do not miss a filing; and
6. I understand that this consent applies only to the cases listed below and that if I file additional cases in which I would like to receive electronic service of notices of documents, I must file consent forms for those cases.

Civil case(s) filed in the Southern District of New York:

Note: This consent will apply to all cases that you have filed in this court, so please list all of your pending and terminated cases. For each case, include the case name and docket number (for example, John Doe v. New City, 10-CV-01234).

Name (Last, First, MI)

Address

City

State

Zip Code

Telephone Number

E-mail Address

Date

Signature

Return completed form to:

Pro Se Intake Unit (Room 200)
500 Pearl Street
New York, NY 10007